

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.115 OF 2016

IN

CRIMINAL APPEAL NO.511 OF 2007

MUBARAK ABDUL REHMAN SHABIR)...APPLICANT

V/s.

UNION OF INDIA AND ANR.)...RESPONDENTS

Ms.Aparna Shinde, Advocate for the Applicant.

Ms.Rebecca Gonsalvez, Advocate for Respondent No.1 – CBI.

Ms.A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 1st FEBRUARY 2017.

P.C. :

1 This is an application by applicant / accused no.1 for permitting him to travel to his home town in United Kingdom during pendency of the appeal filed by him.

2 Heard the learned advocate appearing for the applicant / accused. She vehemently argued that the applicant / accused has already undergone 8 years 2 months of substantive sentence out of the total sentence of 10 years awarded to him by the learned Special court. The learned counsel further argued that property of the applicant / accused situated at 15, Lords Avenue, Lostock Hall, Preston PR5 5HH, Lancashire, United Kingdom, is being taken possession of and in that eventuality, the entire family of the applicant / accused would be displaced. The learned advocate submitted that the applicant / accused was working with Police Department of the United Kingdom and therefore, he is entitled for pensionary benefits. From that amount he can secure possession of the house. It is further argued that the applicant / accused is suffering from several ailments and in such situation, it is necessary for him to go back to United Kingdom during pendency of the appeal.

3 I have also heard the learned advocate appearing for respondent no.1 Narcotics Control Bureau (NCB). She argued that the applicant / accused along with co-accused i.e. original accused no.2 Beghani Talab Suleman were accosted at International Airport of Mumbai when they were attempting to smuggle 5 to 6 kgs of Heroine. After their arrest, they were prosecuted and ultimately by the judgment and order dated 5th April 2007, they both were convicted of the offences punishable under Section 21(c), 28 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985. The learned advocate for the NCB submitted that on earlier occasion, accused no.2 Beghani Talab Suleman had preferred similar application and it was found that reasons given in the said application were incorrect. Therefore, appropriate proceedings were taken out by the NCB. The learned advocate further submitted that the advocate appearing on behalf of accused no.2 Beghani Talab Suleman, who is none else but the uncle of the present applicant, at that time, made a statement that Beghani Talab Suleman is in Ahmedabad itself and his passport is in the custody of the court. By drawing

my attention to the email of accused no.2 Beghani Talab Suleman, the learned advocate for the NCB has pointed out that this accused no.2 Beghani Talab Suleman had already fled from India by obtaining another passport during pendency of the appeal before this court. With this, the learned advocate appearing for respondent – NCB argued that in the event of allowing the instant application, the applicant / accused will not be available for undergoing remaining part of the sentence, if ultimately his appeal fails.

4 I have carefully considered the rival submissions and perused the material placed on record. It is seen that during pendency of the appeal challenging the the judgement of the Special Court by moving similar application before this court, accused no.2 Beghani Talab Suleman has already gone to the Foreign country without even seeking permission of this court and that too by obtaining some another passport when his passport was in possession of the court authorities. In this view of the matter, this court is not assured that on being permitted to go to

foreign country, the applicant / accused would be available either for hearing of this appeal or for undergoing remaining part of the sentence, in the event of failure of his appeal.

5 Considering the nature of offence and conduct of the co-accused, the application is rejected.

(A. M. BADAR, J.)